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Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation

OST-95-950-28

Subject: ACTION: Adding Information into Docket 47383

Date: MAR 18 1996

From: Dennis Marvich
Senior Economist, Office of International Transportation and Trade

Reply to Attn. of: Dennis Marvich x64398

To: Myrna Adams
Chief, Docket Section
Documentary Services Division

In February 1992, in response to then President Bush's announcement of a federal regulatory review, DOT requested public comments on which DOT regulations substantially impeded economic growth. Five comments that included mention of the passenger manifest information requirement found in section 203 of the Aviation Security Improvement Act of 1990 (ASIA), P.L. 101-604, were received into the Office of the Secretary of Transportation (OST) docket established for this purpose (Docket 47978). A March 25, 1992, Air Transport Association of America (ATA) letter that clarified and prioritized ATA's previously-submitted regulatory review comments and included mention of the passenger manifest information requirement was subsequently received by DOT.

Copies of the March 25, 1992, ATA letter and the five comments that included mention of the passenger manifest information requirement that were received into OST Docket 47978 are attached. Because the ATA letter and the five comments contain additional information on the passenger manifest information requirement that may be useful to the public, I request that for the convenient reference of the public that they be placed into the Passenger Manifest Information Docket (Docket 47383) together with a copy of this memorandum.

Air Transport Association OF AMERICA

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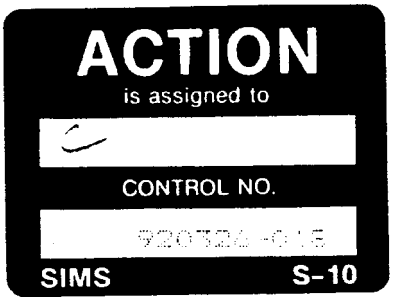
Washington, D.C. 20006-5206
Phone (202) 626-4166

ROBERT J. AARONSON
PRESIDENT

March 25, 1992



The Honorable Andrew H. Card, Jr.
Secretary of Transportation
Department of Transportation
400 Seventh St., S.W.
Washington, D.C. 20590

Dear Mr. Secretary:

A misunderstanding may have developed about the nature of the submissions that ATA made to the Department of Transportation on February 6 and 28 in response to the President's regulatory moratorium. I am writing you to clarify their purpose and to inform you of ATA's highest priorities.

Our submissions were intended to highlight those regulatory matters that warranted special attention during the regulatory moratorium. Many of those matters, especially those listed in our February 6 submission, are the subjects of ongoing rulemaking proceedings at the Department in which ATA and other members of the aviation industry have submitted detailed comments. Because of the existence of those already filed comments, we saw no need to duplicate their detailed arguments and analyses in our regulatory moratorium submissions.

Should the Department require additional information about the proceedings that we referred to in our regulatory moratorium submissions, we suggest that the docket of the particular proceeding be consulted. Alternatively, we would be happy to respond to requests for further information about those proceedings.

To assist you in your review of these matters, I enclose reformatted versions of our February 6 and 28 submissions. They delineate in a clearer form the costs to the industry of the regulatory activity and the objective of the industry in listing the activity.

Sincerely,

Robert J. Aaronson

PRIORITY ATA REGULATORY/LEGISLATIVE TARGETS (DOT/FAA)

		Initial cost (Millions)	Annual cost (Millions)	Agency
1	Criminal History Records Check	$217	$35	F A A
2	Anti-Alcohol Program		150	DOT
3	Drug Testing		10-12	DOT
4	Air Carrier Lavatory Access	450		DOT
5	Aircraft Performance in Rejected Takeoffs		450	FAA
6	Airport Obstacle Analysis		200	FAA
7	Type III Exits		145	FAA
8	Airport Access Control	225 *	45	FAA
9	Passenger Manifest	50	17	DOT
10	Security Identification Display Area Training	7	1	FAA
11	Minimum Equipment List Expansion		200	FAA
	TOTAL	$949	$1,253	

* Does not include $375 million already spent on Access Control.

CONTENTS OF
TERMINATE/MODIFY LIST

REGULATORY MORATORIUM ISSUES
TERMINATE/MODIFY LIST

OFFICE OF THE SECRETARY OF TRANSPORTATION

ANTI-ALCOHOL PROGRAM — $150M ancostl

DOT expects to issue soon a notice of proposed rulemaking concerning its anti-alcohol program. The random testing requirement is the element of the anticipated rule which the airlines object to, due to its high cost requirements and flight disruption potential. Immediate costs will involve testing devices and the training of, or contracting for, testing personnel. Flight delay and disruption are likely to be associated with flight departures where the crew is tested. Our preliminary estimates are that the anti-alcohol program could cost the industry $150 million annually.

Objective: FAA should establish a random testing percentage of 5 to 10% and require simplified testing procedures. (Note: ATA has contracted for a study to determine the costs of random testing. A definitive cost estimate is not possible until it is known what the random percentage will be, the means of testing and a determination if flight operations will be affected and at what cost. The report is due 3/31/92.)

AIR CARRIER ACCESS ACT — $450M initial cost

The rulemaking proceedings intended to implement the Air Carrier Access Act are important for persons with disabilities, air carriers, and airport operators. (Dockets 46811, 46812, and 46813.) The Department must consider carefully the accessibility, operational and cost issues raised by the efforts to develop specifications for accessible locations in wide-body and narrow-body aircraft, and by the requirement for the purchase of lift devices for boarding. It is particularly important that these proceedings result in specifications that do not inhibit airline productivity and future profitability by requiring seat-row removal or retrofit of lavatory modules.

Objective: Cease efforts to develop further mandatory specifications for accessible lavatories in older twin aisle aircraft and all single aisle aircraft.

PASSENGER MANIFEST INFORMATION — $50M initial cost — $16.7M annual cost

The passenger manifest information requirement, which is the subject of an advance notice of proposed rulemaking (Docket 47381), could have significant adverse competitive and facilitation implications for U.S. air carriers. It is not security related and was included in the legislation as the result of a single incident. To fulfill this requirement, airlines will have to expend substantial new resources to obtain the required information from passengers either at the time of reservation or check-in. Either way, customers are likely to experience significant service delays. If the requirement is imposed only upon the international air transportation operations of U.S. air carriers, foreign air carriers will reap a distinct competitive advantage. They will not be subject to the significant equipment and personnel costs, and operational burdens that will result from collecting the information. More importantly, they will not have to ask their customers to specify a contact person and telephone number, which is information that many individuals will find disquieting and consequently may avoid airlines that ask for it.

Objective: Eliminate the requirement inasmuch as this is not a security issue.

PEAK HOUR PRICING

The Department's October 21, 1991 Semiannual Regulatory Agenda indicated that it was considering whether to propose the establishment of guidelines to "encourage" the development of peak and off-peak landing fee schedules at U.S. airports. 56 Fed. Reg. 53613, 53632 (Oct. 21, 1991). No action should be taken about this matter because the objective of such an effort is unclear. Pursuing this matter would consequently expose the traveling and shipping public to unnecessary expense and inconvenience. It would have a disproportionately adverse effect upon service to small communities.

What economic improvement could be accomplished with such guidelines is obscure. If their goal is to increase airport capacity, the method is misplaced because the fundamental impediments to capacity enhancements at U.S. airports are environmental and related concerns. On the other hand, if their goal is to restrict the number of passengers who fly during peak periods, that is contrary to the national air transportation policy of providing air carrier services that respond to consumer needs. The national and local economies would be harmed if that goal were achieved.

Objective: Avoid issuance of proposed rule encouraging peak hour pricing.

FEDERAL AVIATION ADMINISTRATION

AIRCRAFT TAKEOFF PERFORMANCE RULE — $450M annual cost

FAA is considering issuing a supplemental notice of proposed rulemaking (Docket 25471) regarding aircraft takeoff performance which would create specific new criteria and requirements for rejected takeoff situations. The SNPRM cannot be demonstrated as the most effective way to improve safety, and would impose a significant financial burden on the airlines. Its operational penalties would inconvenience passengers and shippers. The airline industry believes that its rejected takeoff training program is a superior and more efficient response than additional regulatory requirements.

Objective: Withdraw the proposed rule and support the industry rejected takeoff training initiative (in a manner similar to the support provided on windshear avoidance.)

AIRCRAFT AND AIRMAN REGISTRATION

Despite a specific statutory exclusion for air carriers, the FAA has proposed a rule in Docket 26148 that would make far more cumbersome the registration of air carrier aircraft. It would also make far more onerous the certification of air carrier airmen. Both of these results would be unnecessary. The target of the proposed regulatory requirement is airplane operators engaged in drug trafficking, which does not include air carriers and airmen engaged in scheduled commercial operations.

Objective: Do not apply the proposed rule to Part 121 air carriers and airmen.

AIRPORT ACCESS CONTROL SYSTEMS — $595M initial cost ($225M not yet spent) — $45M annual cost

FAA regulations (14 C.F.R. §107.14) require that airport operators install automated access control systems to limit access to aircraft and secure areas at airports. The costs of meeting that requirement are enormous -- they eventually may be more than $595 million -- and far exceed what the FAA estimated the implementation costs to be when it issued the regulations in 1989. Air carriers will ultimately pay for the high

implementation costs of the systems through landing fees and other airport use fees. To the extent that AIP funds are used to finance access control system projects, the amount of such funds available to finance other categories of airport improvements would be diminished. Air carriers therefore will have to make larger contributions to those other categories of projects. Additionally, few entities outside of FAA see any security value to the aviation industry from this proposal. These considerations indicate that implementation of this requirement should be restricted to Category X airports.

Objective: Restrict implementation to Category X airports and eliminate the requirement for all others.

AIRPORT OBSTACLE ANALYSIS — $150-250M annual cost

The FAA has proposed the issuance of an Advisory Circular that would have a significant effect on the methods used by many airlines to calculate airport obstacles, which is necessary in computing takeoff and landing performance. Many airlines would have to add staff and technological aids to achieve the requirements presently being considered. In addition, a new method of calculating airport obstacles could result in a reduction of aircraft payload. There has been no safety argument presented in support of the proposed change.

Objective: Maintain current compliance system.

CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

The Civil Penalty Assessment Demonstration Program (14 C.F.R. §13.201 et seq.) has imposed extraordinary legal and administrative burdens on the aviation community and the FAA without yielding any improvement in the performance of the agency's regulatory enforcement program or enhancement program of safety. The backlog of cases brought under it is astounding. Obviously, the FAA must enforce its regulations but the Civil Penalty Assessment Demonstration Program has consumed the resources of both the regulated community and the regulator. It is a program which has had unprecedented and unanimous opposition from all segments of the industry -- from individuals to large corporations -- because of its lack of procedural fairness. Because the statutory authority for it expires on August 1, the Program should be suspended. Its suspension would not deny the FAA the ability to prosecute enforcement cases but would eliminate an unnecessarily costly way of doing so. In the event the Program continues, administration

of it should be transferred to the National Transportation Safety Board.

Objective: Suspend and allow to lapse the Civil Penalty Assessment Demonstration Program. In the event it continues, transfer administration of the Program to the NTSB.

CRIMINAL HISTORY RECORDS CHECKS — $217M initial cost — $35.5M annual cost

The FAA has issued a notice of proposed rulemaking (Docket 26763) in which it proposes that airline and airport employees who have unescorted access to air carrier aircraft and secure areas on airports be subjected to criminal history background checks. As part of the requirement, employees will be fingerprinted. While the economic and operational effects on the aviation community will be extraordinary, the rule will be totally impractical and ineffective. Tens of thousands of airline, airport, and vendor employees will be affected. Their employers may have to pay over $50 per employee for the background checks. (Fingerprint check charges will be at least $23 per employee and processing charges for the entire background check are likely to exceed that amount.) Moreover, the use of employees who are awaiting the results of the check will be restricted. FAA staff has advised us that existing employees, including those who have been employed by a carrier for a long period of time, will be subject to the background check requirement. Their inclusion will greatly exacerbate the impact of the rule. FAA estimates the costs of the rule will range from $46 million to $66 million. This is vastly understated inasmuch as some cost issues were not addressed by FAA, including, for example, the additional costs of escorting non-cleared employees awaiting the FBI fingerprint check.

Objective: Inasmuch as there is no nexus between the proposed records check requirement and terrorism, the proposed rule should be withdrawn.

REDUCTION IN RANDOM DRUG TESTING — $10-12M annual cost

ATA has submitted a petition requesting that the frequency of random drug testing be reduced. (Docket 26604.) The cost of random drug testing is well in excess of estimates made by FAA at the time of the rulemaking. Equally important, the number of positive results is small. Consequently, the frequency of testing should be reduced.

Objective: Reduce testing percentage from the current 50% to 10%.

FLIGHT ATTENDANT STAFFING REQUIREMENTS WHILE AIRCRAFT IS AT THE GATE — $12M annual cost

In this notice of proposed rulemaking (Docket 25874), the FAA seeks to amend the regulations which determine how many flight attendants are required when the aircraft is parked at a gate. The current regulation permits one half the number of required flight attendants, rounded down. For example, under it, a 130 seat B727 that was staffed by three flight attendants could have one flight attendant on board while it was parked at the gate. The proposed rule would extend the relief to all ground operations but would amend the required number of flight attendants in 100-to-150 seat airplanes to two instead of one under the present rule. No safety argument has been presented in support of this restrictive change.

Objective: Maintain current staffing requirements for 100-to-150 seat aircraft in final rule.

HIGH DENSITY TRAFFIC AIRPORTS RULE

Nothing should be done to the high density traffic airports rule that would complicate it and thereby increase the cost of air carrier compliance with it. (Docket 25758.)

Objective: Avoid costly changes to the high density traffic airports rule.

SECURITY IDENTIFICATION DISPLAY AREAS — $6.9M annual cost

The FAA requires under section 107.25 of the Federal Aviation Regulations that those persons who are allowed unescorted access to the security identification display area of an airport receive training in security identification procedures and requirements. SIDAs are defined by airport operators and therefore can vary greatly. This requirement places a substantial burden on flight crews because they must receive SIDA training for their home base and for all of the airports that they fly to. Such a burden is unnecessary. Because flight crews only need access to certain portions of the SIDA, training should be standardized and universally applicable.

Objectivei Eliminate the airport specific training requirement for transient crews and other airline employees who already receive initial and recurrent security training.

DYNAMIC SEAT RETROFIT $1B initial cost $900M annual cost

The proposed dynamic seat retrofit rule (Docket 25611) would require the airline industry to replace the seats in upwards of 60 percent of its aircraft. That would be a costly undertaking, especially in view of the anticipated retirement of many older aircraft during this decade. Our initial projection indicates that replacement seats would cost more than $1 billion to purchase and install. Furthermore, we are concerned about the capacity of manufacturers to produce the replacement seats within the compliance deadline that FAA may establish. Finally, the performance criteria proposed in the notice of proposed rulemaking could require the removal of the row of seats behind aircraft bulkheads. Removal of an average of six seats per aircraft would result in a revenue loss of more than $900 million annually for the airlines.

These results would be very costly to airlines, both in terms of the expense of replacing seats and the potential revenue loss from the removal of behind-the-bulkhead seats.

Objective: Withdraw the NPRM and allow retrofit to occur on an attrition basis.

DC-9 TAILCONE EXIT REDESIGN $10M initial cost

The FAA is preparing a proposed rule that would require DC-9 operators to modify the aircraft's tailcone exit to meet MD-80 standards. Preliminary projections indicate that such a modification would cost air carriers over $10 million. That expense would create no appreciable improvement in the airworthiness of the aircraft. The proposed rule would be particularly unnecessary because the DC-9 tailcone has been the subject of four FAA airworthiness directives, which have remedied previous airworthiness concerns regarding the exit handle and tailcone unsafe-indication system. Moreover, many DC-9s are likely to be retired before the end of the decade.

These factors strongly argue against initiating a rulemaking concerning the DC-9 tailcone exit.

Objective: Discontinue rulemaking activity on DC-9 tailcone exit redesign.

MD-80 BRAKE WEAR LIMITS $2.25M annual cost

The FAA is processing a proposed rule (Docket 91-NM-239-AD) that would change the brake wear limits on all MD-80 series aircraft. The proposed rule would result in

different types of MD-80 series aircraft (viz., the MD-82 and the MD-83) operating at the same maximum gross takeoff weight to have different brake wear limits, even though each aircraft uses the same part number brake. This will necessitate premature brake replacements for some aircraft, which will cost MD-80 air carriers an additional $1.5-3 million annually. Thus, air carriers will experience increased costs and added burdens to their maintenance programs.

Those burdens are unnecessary. The brake wear standards should be established by aircraft weight and part number rather than by aircraft model.

Objective: Modify the proposed rule to ensure that the provisions reflect the manufacturer's test results and that like model aircraft are not penalized.

IMPROVED WATER SURVIVAL EQUIPMENT — $250-350M annual cost

This proposed rule (Docket 25642) would require additional water survival equipment for inadvertent water landings. In the notice of proposed rulemaking that initiated this proceeding, the FAA acknowledged that the cost-benefit ratio for this proposal would not ordinarily support its issuance. This acknowledgment is especially significant because the FAA cost estimates are considered to be extremely understated not only for initial equipage but also for maintenance of the additional equipment. The FAA proposed this change in the mistaken belief that it was under a statutory mandate to do so. It is not and therefore the proposal should be withdrawn.

Objective: Withdraw proposed rule.

TYPE III EXITS — $145M annual costs

The notice of proposed rulemaking (Docket 26530) concerning Type III emergency exits (typically the smaller over-wing exists of air carrier aircraft) would result in an estimated annual revenue loss of $145 million to the airline industry because of aircraft seat loss. That sum would be in addition to modification costs and out-of-service costs attributable to the modification program that the proposed rule would require.

Objective: Replace proposed rule with industry proposal that does not involve seat loss.

TYPE AND NUMBER OF EMERGENCY EXITS

This proposed rule (Docket 26140) would create standards for new exit types for air carrier aircraft. Efforts, such as this, to "design by rule" unnecessarily constrain equipment manufacturers and result in less-than-optimal interior configurations and evacuation systems. Rather than mandating detailed standards, any new requirement should establish performance criteria. The use of such criteria would provide more flexibility to aircraft designers. This would allow improvements to air carrier aircraft exits to be developed more economically.

Objective: Withdraw the proposed rule and incorporate its intent in a new performance standard for emergency evacuation.

HYDROSTATIC TESTING OF HIGH PRESSURE CYLINDERS — $5M initial cost — $5M annual cost

DOT regulations require periodic testing of pressure cylinders moving in interstate commerce. (49 C.F.R. §171.7.) Due to the favorable environment in which cylinders on aircraft exist, FAA established a relaxed standard for such cylinders. (Order 8000.40A.) DOT challenged FAA's determination and required the withdrawal of the exemption. The FAA reflected that decision in Order 8000.40B. When the industry pointed out the immense consequences of this order (grounding of half the fleet and more overdue cylinders than the industry could test in two years), FAA amended the order to provide for a transition period due to the logistical problems of complying on short notice. (Order 8000.40C.)

Airlines have safely operated under the FAA exemption for 15 years. Withdrawal of the exemption requires more frequent inspections and tests, as well as procurement of thousands of extra spares to support the rotation required under the new schedule. The industry will incur more than $5 million in annual recurring costs, plus spares and support equipment costing upwards of $5 million.

Objective: Retain the existing procedures in FAA Order 8000.40A.

ANTI-ICE SYSTEMS FOR DC-9-10 — $23M initial cost

The FAA is preparing a notice of proposed rulemaking that will require DC-9-10

operators to modify the aircraft's anti-ice system by adding control components to allow bleed air to be delivered to the wing leading edges on the ground while the engines are operating at or near idle rpm. The FAA has indicated that the rule will be issued in September, 1992 with a 90-day compliance time. The modification requirements have not been developed by the manufacturer, Douglas nor have design engineering, logistic, certification and test requirements been identified. The estimated cost to modify each airplane is expected to be approximately $400,000. The expected lost revenue per airplane due to down time to install the modification is also approximately $400,000. We estimate that the industry would suffer over $22 million in lost revenue and modification costs if this rule is issued.

The action recommended by the FAA is intended to eliminate the requirement to complete a visual and tactile inspection of the leading edge wing during winter operations in ice/snow conditions. While the ATA supports changes that will improve the safety and airworthiness of our members' aircraft, an acceptable level of safety can be maintained via the visual and tactile inspection without burdening operators with expensive modifications to a 25 year old aircraft.

Objective: Discontinue rulemaking activity on DC-9-10 anti-ice system and use present inspection criteria to maintain safety and airworthiness.

MD-80 ICE DETECTORS AND INBOARD REFUELING — $45M initial cost

The FAA is processing a proposed rule which will require that MD-80 operators install Douglas SB 30-64 (Ice Detectors) and SB 28-59 (Inboard Fuel Burn) to help eliminate problems associated with cold-fuel induced ice on the upper wing surface. Field tests of the ice detector and inboard refuel SB are being conducted on three airline airplanes. Data to date are inconclusive as to the merits of these improvements. It would take approximately 1020 manhours to install the 2 SBs and the kit cost per airplane would be $56,000, for a total cost, excluding lost revenue because of down time, of $112,000 per airplane. Cost to all ATA operators (400 MD-80s) would be $44,800,000. Present inspection procedures established in conjunction with the FAA, Douglas and our operators provide an acceptable level of safety for MD-80 winter operations.

Objective: Discontinue any proposed rulemaking that requires installation of inboard refueling and ice detector service bulletins on MD-80 aircraft.

CORROSION AIRWORTHINESS DIRECTIVES $50M annual cost

ATA supports the corrosion control programs that have been developed through the efforts of industry and government. However, we have developed significant concerns about the way they have been implemented. The cost of compliance with the programs, as the FAA has implemented them, has been significantly understated by the FAA. It now appears that additional compliance recording costs, plus requirements for entirely new heavy inspection visits to comply with unique repeat inspection intervals, will easily exceed $50M per year for the industry. Consequently, corrosion control programs must be carefully reexamined to eliminate unnecessary compliance and recordkeeping requirements. In addition, the program should be incorporated into existing maintenance programs and inspection intervals to minimize the added costs of additional major maintenance visits solely to comply with corrosion inspection requirements.

Objective: Revise the existing Boeing corrosion airworthiness directives to eliminate unnecessary compliance and recordkeeping requirements. Provide similar treatment for Douglas, Fokker, Lockheed, and Airbus aircraft.

CONTENTS OF
EXPEDITE OR INITIATE LIST

REGULATORY MORATORIUM ISSUES
EXPEDITE OR INITIATE LIST

PORTABLE BREATHING EQUIPMENT INSTALLATION REQUIREMENTS — $.5M initial cost

ATA has petitioned the FAA for relief from unnecessary and duplicative portions of the rule requiring certain installations of portable breathing equipment that are mandated in FAR section 121.337 (Amendment 121-193). Moreover, the FAA has under consideration an additional amendment to the PBE rules which would ease the burden of crewmember fire fighting requirements. Both of these matters should be expeditiously processed.

Objective: Approve the ATA petition and expeditiously amend the rule.

MINIMUM EQUIPMENT LIST EXPANSION — $200M annual cost

The Master/Minimum Equipment List process should be streamlined to (a) eliminate aircraft equipment items clearly not needed for airworthiness, via revision of the MMEL preamble, (b) standardize MMEL ATA chapters among all aircraft models, (c) allow MMEL provision incorporation as soon as type certification is issued, and (d) maintain the MMEL in a safe and cost efficient manner that allows operators maximum dispatch flexibility as a result of installing redundant equipment.

Objective: Adopt ATA proposal for lead-airline coordination of MMEL with manufacturer and FAA. Modify the MMEL preamble to include recommendations stated above.

PORTABLE PERSONAL ELECTRONIC DEVICES STANDARDS — $10M initial cost

The proliferation of new portable electronic devices in the market place has resulted in increased use of these devices aboard aircraft by air travelers. FAR section 91.21 inadequately stipulates what is authorized for use on board transport category aircraft. A proposed revision to that provision submitted by ATA on January 13 specifically annotates what portable devices should be authorized on board transport category aircraft. Adoption of the amendment to FAR section 91.21 would save $10 million dollars in test costs to validate what has been previously reported by the RTCA. In addition, it would also eliminate future aircraft hardening and shielding requirements by

operators to allow any portable device to be used on board aircraft. (Costs of retrofitting aircraft shielding fleet wide to eliminate interference from portable devices would exceed $100 million.)

Objective: Adopt ATA's proposed amendment to FAR §91.21.

RELIEF FROM HIGHER WEATHER MINIMA FOR NEW PILOTS-IN-COMMAND

ATA petitioned FAA on December 17, 1991 seeking relief in the form of an exemption, followed by a rule change, to permit newly qualified pilots-in-command (PIC) to operate without the higher weather minima for the first hundred hours as PIC. The use of advanced simulators and auto-landing aids, which did not exist at the time of the creation of this requirement, support the ATA position.

Objective: Expeditious processing of exemption and action on regulatory change.

OPERATOR ISSUED PILOT CERTIFICATE CONFIRMATION

ATA petitioned FAA on June 11, 1991 for an exemption or other regulatory relief to permit certificate holders to issue temporary pilot licenses and medical certificates for airmen in their employ when they are lost or stolen. FAA has a telegraphic capability to do this; however, the office is not available 24 hours a day. Consequently, the relief we seek is necessary to avoid interruption of air carrier operations.

Objective: Expeditious processing of ATA petition granting requested relief.

USE OF PHASE II SIMULATORS FOR INITIAL PIC

ATA petitioned FAA on February 21, 1992, for FAA reconsideration of a partial grant from requirements in Appendix H of FAR Part 121, which establishes standards for advanced aircraft simulators. FAA had previously granted relief from some aspects of Appendix H. However, there is an absence of recognition on the part of FAA of the success in training using Phase II simulators instead of Phase III simulators, which have more technical requirements but provide no perceptible difference in the quality of the trained pilots.

Objective: Expeditious processing of ATA petition granting requested relief.

NOISE ABATEMENT PROCEDURES

The FAA has a task force working on amended standard takeoff profiles for noise abatement purposes. Once published, airlines observing the revised standards will find easier access to some airports because they will be using the "FAA standard" procedure, and fewer unique procedures will be required. Because of the flight training, fuel, and flight time savings of these standard procedures, they should be issued quickly.

Objective: Promptly issue standard procedures.

PHASE III COCKPIT SIMULATORS

Appendix H of FAR Part 121 establishes ambient lighting requirements for Phase III cockpit simulators. Until recently, this requirement was not enforced because of the lack of available technology to achieve it. Within the last two years, such technology has emerged. However, the nearly ten years of experience without the enforcement of the requirement has made the case that its enforcement would be of no training value. We therefore request that relief from this requirement be expeditiously granted.

Objective: Expeditiously issue relief from lighting requirements.

RECORDATION OF EN ROUTE RADIO CONTACTS

FAR section 121.711 requires that air carriers record and retain for 30 days each en route radio contract with their aircrews. Neither safety nor administrative considerations can justify this requirement. It should be expeditiously eliminated.

Objective: Quickly eliminate recording requirement.

COCKPIT SIMULATOR RECURRENT EVALUATIONS

The FAA inspects air carrier flight simulators every four months to ensure that they comply with the technical specifications under which they were certified and that they are currently being used. Both the FAA and the airline industry have recognized that many of the simulators have been performing within their required capabilities over several visits. The FAA and air carriers would be benefitted if the frequency of inspection visits was reduced.

Objective: Reduce frequency of inspections.

BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

In re:	
REGULATORY REVIEW	Docket 47978
(Notice 92-l)	

COMMENTS OF JAPAN AIRLINES COMPANY, LTD.

Laurence A. Short
David H. Coburn
STEPTOE & JOHNSON
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-3000

March 6, 1992

BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

In re: REGULATORY REVIEW (Notice 92-l)	Docket 47978

COMMENTS OF JAPAN AIRLINES COMPANY, LTD.

Japan Airlines Company, Ltd. ("JAL") hereby submits comments in response to the February 7, 1992 Notice announcing this Regulatory Review proceeding. The goal of this proceeding is to identify and "weed out" those regulatory requirements which, in the words of President Bush; are "unnecessary and burdensome . . . ., which impose needless costs on consumers and 'substantially impede economic growth." JAL submits that numerous regulations and proposed regulations concerning foreign air carriage meet the President's definition of those regulations warranting review.[1/] These regulations and proposed regulations are addressed below.

[1/] JAL is simultaneously submitting comments in FAA Docket No. 26768.

1. Drug and Alcohol Testing

By virtue of the enactment late last year of the Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143 (Oct. 28, 1991) ("Testing Act"), the Department and the FAA will be fashioning regulations within the next few months that will address the testing of certain airline employees for alcohol and controlled substances.[2/] With respect to foreign air carriers, the statute notably provides that "the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries." The Congress included this provision in the Testing Act obviously cognizant of the considerable potential for conflict with foreign laws and international obligations raised by any testing rules made applicable to foreign air carriers.

Any regulations implemented'under this statute must therefore carefully weigh the relevant provisions of the 'Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180 ("Chicago Convention") and the numerous civil aviation bilateral agreements to which the U.S. is party, e.g., U.S.-

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[2/] Controlled substance regulations applicable to U.S. carriers, their contractors and others are, of course, already in place having been adopted in Docket No. 25148, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities, 53 Fed. Reg. 47024 (Nov. 21, 1988). These rules do not apply to foreign air carriers.

Japan Civil Air Transport Agreement of August 11, 1952, 4 U.S.T. 1948. In addition, to the extent that laws of other nations are relevant, a procedure will need to be established whereby those laws may be fully assessed by DOT and the FAA in order that the possibility of the imposition of conflicting legal requirements on foreign carriers can be avoided. Such a process would be consistent not only with the mandate of the Testing Act, but with the directive in the President's Regulatory Review order that the Department's regulations "should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation."

The Testing Act's requirements have the potential of placing extraordinary financial burdens on airlines. As the experience of the U.S. carriers under the current controlled substance testing procedures has shown, the testing process is exceedingly expensive not only in terms of the direct costs for conducting and reviewing test results, but also in terms of lost work time and reduced productivity that results from the testing process. Further, the level of controlled substance abuse has proven to be de minimus. The cost of alcohol testing is likely to be considerably greater than the cost of controlled substance testing given the nature of the available technology for performing alcohol testing. In addition, the Testing Act imposes rehabilitation requirements and these costs too are likely to be substantial.

Given the prospect that testing regulations are likely to entail such great expense for airlines, the need for a studied review of the propriety of prescribing these regulations for foreign air carriers -- in view of the conflicting demands of international agreements and foreign law -- becomes manifest. DOT and FAA must tread cautiously in this regard to avoid any potential conflicts with foreign laws and U.S. international obligations, and thus to avoid the unwarranted extension of extraordinarily costly regulations to persons properly exempt from such regulations.

Further, an indefinite postponement of the application of controlled substance testing rules to persons located outside the U.S. should be adopted. At present, these rules are due to become effective for persons located overseas on January 2, 1993. 14 C.F.R. § 121, Appendix I, paragraph XII B. By postponing the overseas application of its rules indefinitely, the FAA and DOT will ensure that there is sufficient time to explore all of the serious ramifications of such an overseas extension of its rules ,and to work within the structure of existing international agreements to achieve the ends sought by the controlled substance testing rules.

2. Americans with Disabilities Act

In its comments filed in this docket, the Air Transport Association of America ("ATA") stated that the regulatory review process contemplated by this proceeding provides an opportunity

to reconsider the costly requirements imposed by the regulations implementing the Americans with Disabilities Act **("ADA").** JAL fully supports the ADA and the important goals of equal access for disabled persons sought by that statute. JAL also believes that the DOT regulations implementing that statute are prime candidates for a further cost/benefit review of the sort contemplated by the President. Those regulations are having an extraordinary impact on airport terminal design and, consequently, on the cost of construction and operation of terminal facilities. Reasonable rules must be developed that take into account the costs of construction and renovations of airport facilities -- which far exceed other types of construction costs -- and the limits of available financial resources.

3. Prooosed Passenger Manifest Information Rule

On January 31, 1991, DOT issued an advance notice of proposed rulemaking in Docket No. 47383, Aviation Security: **Passenger** Manifest Information. The ANPRM solicited comments, inter alia, on whether the passenger manifest collection requirements imposed on U.S. carriers by section 203 of the Aviation Security Improvement Act of 1990, Pub. L. No. 101-604 (Nov. 16, 1990) ("Security Act") should be extended to foreign air carriers. The Security Act mandates those requirements only for U.S. air carriers.

JAL submitted comments explaining why the passenger manifest requirements should not be extended to foreign air carriers. Among other points, JAL explained that any requirement to collect personal data from air passengers would conflict with the Constitution of Japan, and thus place JAL in an untenable position of facing conflicting demands of different sovereigns. Comments submitted by numerous other foreign air carriers indicate that JAL is not the only carrier that would confront these types of problems should a passenger manifest rule be adopted.

In the context of the instant proceeding, it merits note that the substantial cost of a rule requiring the collection of passenger manifest data -- particularly in the form of reduced productivity of check-in personnel and increased recordkeeping costs for thousands of daily flights -- are not clearly outweighed by any discernable benefits that would be achieved by applying the rule to foreign air carriers. Indeed, the benefits of extending a passenger manifest requirement to foreign air carriers appear highly tenuous given the relatively low percentage of U.S. citizens transported by such carriers. For example, statistics published by DOT in U.S. International Air Travel Statistics show that in 1990, almost three times as many U.S. citizens traveled on U.S. carriers between the U.S. and Japan as traveled on Japan-flag carriers.

Unsubstantiated claims that foreign air carriers would achieve a competitive advantage were they exempted from a

passenger manifest requirement deserve no weight. Not only do U.S. carriers transport the largest number of U.S. citizens, but imposing a passenger manifest requirement on them raises none of the concerns regarding foreign laws and international agreements that are raised by any proposal to extend the requirements to foreign carriers. Congress so recognized when it mandated the requirements only for U.S. carriers.

Finally, before proceeding further with any passenger manifest regulations, DOT should clarify the relationship between any passenger manifest requirement it might impose and the voluntary Advanced Passenger Information System **("APIS")** established by the Customs Service. Any contemplated sharing of information between the two agencies should be fully disclosed so that public comment can be prepared with respect to such plans.

4. Peak Hour **Pricing**

JAL concurs in the views expressed by **ATA** with respect to any forthcoming DOT proposal to encourage peak and off-peak **landing** fee schedules at U.S. airports. The fact that there exist **"peak"** periods at airports is a reflection of passenger -- not airline -- choice as to the hours most convenient for passenger travel. JAL has no doubt that it would be contrary to the interests of international air passengers, and to international aviation generally, to impose a penalty on peak hour travel in the form of higher landing fees. Moreover, any such proposal would have to be carefully weighed against anti-

discrimination and other commitments undertaken by the U.S. in relevant international agreements.

CONCLUSION

JAL applauds DOT for undertaking a considered review of its regulations so as to promote efficiency and reduce unnecessary costs. The extensive and costly regulatory burdens imposed on the airline industry are well known. While this industry will undoubtedly continue to be subject to extensive regulation, it is time that a more probing cost/benefit analysis of the regulations and proposed regulations be undertaken to identify, and eliminate, those regulatory burdens that cannot withstand that analysis.

Respectfully submitted,

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-'March 6, 1992

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the Matter of

PRESIDENTIAL MORATORIUM ON FEDERAL REGULATIONS

Docket 47978

PETITION OF THE
AIR TRANSPORT ASSOCIATION OF AMERICA

President Bush in his January 28 State of the Union Message declared a **90-day** moratorium on new Federal regulations. The President instructed Federal departments and agencies to identify and eliminate pending regulatory initiatives and existing regulations that could impede economic growth during the moratorium.

The Air Transport Association of America submits this petition in which we identify those proposed and existing rules that should be carefully examined during the moratorium.[1] We urge that those rules be studied further, modified or withdrawn.

The regulatory review that the President has ordered is very important to the U.S. airline industry. We have suffered $6 billion in losses during the last two years and therefore cannot afford the burden of unneeded regulatory requirements. The rules and proposed rules that we believe require special attention in order that we can be relieved from such unnecessary requirements

[1] **ATA** sent this list to Acting Secretary of Transportation Busey in a letter dated February 6, a copy of which is attached to this petition.

are as follows.

Anti-Alcohol Program for the Airline Industry. (Docket 46574.) The Department is considering an anti-alcohol program rulemaking because of the Omnibus Transportation Testing Act of 1991, Pub. L. No. 102-143, and a previous advance notice of proposed rulemaking that DOT issued in Docket 46574.

The issuance of proposed regulations under the Act or in Docket 46574 should be postponed to permit an evaluation within DOT that assures that any proposed testing program will accomplish its objectives with the least possible negative impact on the airline industry. We are especially concerned that an alcohol testing program involving flight crews operating from a myriad of locations could require significant expenditures for testing equipment, more frequent than necessary testing, costly programs to train those persons who administer the tests, and could delay crew members performing their flight duties, thereby leading to operational delays. We anticipate that the airline industry could incur tens of millions of dollars in expenses because of such a program.

Air Carrier Access Act. (Dockets 46811, 46812, and 46813.) The rulemaking proceedings intended to implement the Air Carrier Access Act are important for persons with disabilities, air carriers, and airport operators. We believe that the regulatory moratorium provides the Department with an opportunity to consider carefully the accessibility, operational and cost issues raised by the efforts to develop specifications for accessible

locations in wide-body and narrow-body aircraft, and by the requirement for the purchase of lift devices for boarding. It is particularly important that these proceedings result in specifications that do not inhibit airline productivity and future profitability by requiring seat-row removal or early retrofit of lavatory modules. The potential financial impact to the airline industry is in the hundreds of millions of dollars.

Americans with Disabilities Act. (Docket 47483.) The moratorium also provides an opportunity to consider carefully the various issues associated with implementing the requirements of the Americans with Disabilities Act. The ADA will most notably affect airport facilities. Because airlines ultimately pay for improvements to airport facilities through landing fees and other charges, ADA requirements could cost the industry hundreds of millions of dollars.

Passenger Manifest Information. (Docket 47381.) The passenger manifest information requirement, which is the subject of an advance notice of proposed rulemaking, could have significant adverse competitive and facilitation implications for U.S. air carriers. If the requirement is imposed only upon the international air transportation operations of U.S. air carriers, foreign air carriers will reap a distinct competitive advantage. They will not be subject to the significant cost and operational burdens that will result from collecting information from individual passengers to fulfill the manifest requirement. Very importantly, they will not have to ask their customers to specify

a contact person and telephone number, which is information that many individuals will find disquieting and consequently may avoid airlines that ask for it.

The information required to be collected should match that provided under the advance passenger information program that four large U.S. air carriers are using at a number of foreign locations and which they expect to extend to the remainder of their foreign locations by the end of the year. That program allows passport information to be transmitted electronically to the U.S. Customs Service and the Immigration and Naturalization Service, thereby benefitting the Federal inspection agencies and improving processing times of passengers upon arrival in the United States.

For efficiency and competitive reasons, the notice of proposed rulemaking that DOT issues should reflect these considerations. We anticipate that costs to the airlines of the passenger manifest rule will be in the millions of dollars, excluding potentially lost revenue.

Peak Hour Pricing. The Department's October 21, 1991 Semiannual Regulatory Agenda indicated that it was considering whether to propose the establishment of guidelines to "encourage" the development of peak and off-peak landing fee schedules at U.S. airports. 56 Fed. Reg. 53613, 53632 (Oct. 21, 1991). No action should be taken about this matter because the objective of such an effort is unclear. Pursuing this matter would consequently expose the travelling and shipping public to

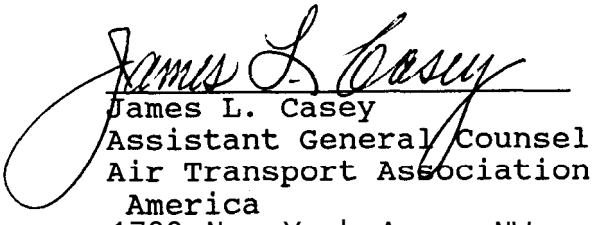
unnecessary expense and inconvenience. It would have a disproportionately adverse effect upon service to small communities.

What economic improvement could be accomplished with such guidelines is obscure. If their goal is to increase airport capacity, the method is misplaced because the fundamental impediments to capacity enhancements at U.S. airports are environmental and related concerns. On the other hand, if their goal is to restrict the number of passengers who fly during peak periods, that is contrary to the national air transportation policy of providing air carrier services that respond to consumer needs. The national and local economies would be harmed if that goal were achieved.

Given these considerations, the peak hour pricing guidelines should not move forward.

We believe that these matters can be acted upon as we have suggested without compromising safety or consumer protection. We ask that they be given prompt and serious consideration.

Respectfully submitted,



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February 10, 1992

Air Transport Association OF AMERICA

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ROBERT J. AARONSON
PRESIDENT

February 6, 1992

The Honorable James B. Busey, IV
Acting Secretary of Transportation
Department of Transportation
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Washington, D.C. 20590

Dear Jim:

In his State of the Union Message, President Bush declared a 90-day moratorium on new Federal regulations that could hinder economic growth and instructed Federal departments and agencies to identify and eliminate pending regulatory initiatives and existing regulations that could impede growth. The airline industry regards the moratorium as a unique opportunity for the Department to eliminate pending and existing regulations that are unreasonably burdensome. Furthermore, the moratorium should occasion the Department to undertake a back-to-basics reexamination of how it develops regulations, and to reorient that process so that costly regulations which lack concomitant benefits are not imposed upon the airline industry and, in turn, upon consumers. This effort will be indispensable if the U.S. airline industry is expected to recover its economic vitality.

The stakes are too high to allow nonessential regulatory burdens to thwart the airline industry's economic recovery. Our industry has hemorrhaged for the last two years. Since January 1990, we have lost $6 billion. Those losses have had excruciating consequences. Three large air carriers -- Eastern, Midway, and Pan American -- stopped operating in 1991. Their demise, and the extraordinarily adverse conditions throughout the industry, have resulted in tens of thousands of employees losing their jobs. Each job loss is a personal tragedy; unhappily, layoffs among airline employees continue today. We therefore cannot afford a "business as usual" approach to any facet of our activities, including government regulatory matters.

Regulatory impact analysis at the Department and its constituent agencies has troubled us for some time. Our experience is that regulatory proposals are

not always subjected to the searching cost and operational evaluations that they should before they are released to the public. Not only have there been shortcomings in projecting the costs of proposed rules but, equally important, there has apparently been no development of a *hierarchy* of potential regulatory initiatives. We discern no criteria or plan that subjects proposed regulations to an evaluation that both weighs their costs and benefits, and *ranks* potential rules according to their net benefits. Instead, we see rules, such as the airport access control requirements of FAR section 107.14, that have imposed enormous expenses upon the aviation community but will yield no more than marginal benefits.

That situation, if it persists, will drain our limited resources. When the airline industry must bear the added expense of unreasonable regulatory burdens, passengers and shippers are denied expanded services, workers suffer, and carriers cannot make capital investments for needed new aircraft and facilities.

The Department's regulatory actions must therefore be based upon the recognition that the airline industry's resources are finite. This does not mean that justifiable regulatory actions should be abandoned. It does mean, however, that the decision to initiate a regulatory action, or to continue an existing regulation, must be a very disciplined process. Not only should the regulation under consideration promise to produce benefits that clearly outweigh the costs of its imposition, it also must fit into a plan that establishes *priorities* for regulatory activities on the basis of cost-benefit considerations. We simply do not have the wherewithal as an industry to continue to absorb ad hoc regulatory action.

The President's directive to Federal departments and agencies has come at an especially opportune time. The process of evaluating regulations at the Department and its constituent agencies sorely needs a fundamental reappraisal. The approach that we urge will assure that needed safety and consumer protection improvements occur. However, the discipline that it is based upon will winnow out those proposed and existing regulations that do not promise to provide significant net benefits. The result will be a better regulatory program.

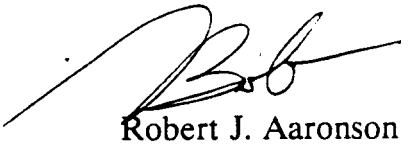
To assist the Department in performing the Presidentially mandated regulatory review, enclosed is a list of Departmental and agency rules and proposed rules that should be examined especially closely during the moratorium. They either hinder growth or could hinder growth upon their implementation. The postponement, modification or withdrawal of the rules that we have identified would not jeopardize aviation safety. We will be submitting to the Department

and its agencies petitions to review the rules and proposed rules that we have listed on the enclosure. In addition, we will be submitting a list of those proposed regulations that we believe should be expeditiously implemented.

We realize that the Department's task is difficult. Revisiting existing rules and taking a second look at proposed rules requires considerable effort and objectivity. Part of the difficulty of this undertaking is that many regulations have statutory origins. That does not mean that regulations implementing a statutory requirement should not be scrutinized. Statutes typically give the Department or its agencies considerable discretion in how they are implemented. We believe that the rules and proposed rules that we have identified in the enclosed list are of that nature. Consequently, the Department has the freedom to modify or withdraw them. However, should the Department conclude that a statute denies it that freedom, we urge that the Department follow the President's instructions and develop legislation that would correct the regulatory problem.

The President has created an opportunity to recast the regulatory process at the Department. It should be enthusiastically embraced.

Sincerely,



Robert J. Aaronson
President

AmericanAirlines

March 2, 1992

Honorable Andrew H. Card, Jr.
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Honorable Barry L. Harris
Acting Administrator
Federal Aviation Administration
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Honorable Travis P. Dungan
Administrator
Research and Special Projects Administration
400 7th Street, S.W.
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Re: Regulatory Review In Response To The President's State Of The Union Address

Dear Mr. Secretary, Acting Administrator, and Administrator:

On behalf of American Airlines, Inc., this responds to the President's announcement, in his State of the Union address on January 28, 1992, of a Federal regulatory review, and the Department's subsequent request for comments to identify regulations which "substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape" (57 Fed. Reg. 4744, February 7, 1992).

In the accompanying volumes, American has identified more than 100 regulations and policies issued or proposed to be issued by the Office of the Secretary, the Federal Aviation Administration, and the Research and Special Programs Administration which squarely meet the President's and the Department's definition and which should be immediately targeted for elimination or substantial revision. These regulations and policies substantially hinder growth by imposing needless costs and administrative burdens, with no countervailing benefits to the public, Their repeal or modification will result in cost savings of hundreds of millions of dollars to American, and

many times that amount to the airline industry, which is struggling to recover from devastating economic losses suffered in 1990 and 1991 and continuing into 1992.

American is particularly concerned with (1) FAA slot rules which severely limit growth at Chicago **O'Hare** International Airport, (2) an OST rulemaking proposal on computer reservations systems, (3) **FAA** regulations on passenger facility charges, (4) FM regulations on airport security, (5) an OST passenger manifest proposal for international flights, and (6) FM regulations on drug and alcohol testing. There are dozens of other rules and policies which should also be curtailed or repealed in order to provide significant cost savings and greatly enhanced opportunities for economic growth.

First and foremost, the Department must remedy the artificial limitation on capacity at slot-controlled airports. No situation is more grievous than that at **O'Hare** where regulations -- which were supposed to be temporary when they were imposed 23 years ago -- prevent competition, deny opportunities for use of larger aircraft, and foreclose opportunities to open service to new cities.

In response to the President's initiative, American filed a petition with the FAA on February 18, 1992, asking for changes in these rules which would create jobs and provide opportunities for economic growth. There is no safety reason why these changes cannot be implemented immediately, particularly in light of improvements completed and planned in the Chicago area ATC systems resulting from billions of dollars in investment, the FAA's announcement that delays at O'Hare in 1991 were down by 35 percent, and the cessation of Midway Airlines operations. It is essential that the Department act immediately on American's request and not take months for review as it has in the past.

In light of the President's initiative, the Department must also closely scrutinize the pending rulemaking proposal on computer reservations systems. Despite extensive CRS regulations that have been in place since 1984, last year the Department proposed new and burdensome regulations that would increase our costs immensely and raise the fees we must charge. Moreover, these proposals would impact our ability to invest in this global business and stay ahead of our foreign competitors. If there were ever a regulatory proposal that hit the mark on the President's warning about Government tying the hands of business, this is the one.

The CRS rulemaking should be withdrawn. At most, the existing rules should be extended indefinitely. In fact, the Department should consider rescinding the present rules except those requiring neutral displays and non-discriminatory fees for airlines. This will let the marketplace function and let us get on with our business, renew investment, and create jobs. And it will let us effectively compete for international market share -- a battle that U.S. CRS technology can win.

Many of American's recommendations can be accomplished immediately through changes in Departmental policy and without rulemaking formalities. Others may require notice and comment procedures. In light of the President's call for action and the perilous state of the airline industry, the Department should take all necessary measures to eliminate costly and unneeded regulations and policies as promptly as possible.

The attached volumes are the product of American's review since the Department issued its request for comments a few weeks ago. We are continuing the review process, and expect to supplement our submission by identifying other regulations and policies which, in the President's words, are "unnecessary and burdensome" and "impose needless costs on consumers and substantially impede economic growth" (57 Fed. Reg. 4745).

American believes that the President's regulatory review initiative is of extreme importance to the economy in general and to the airline industry in particular. We are ready to provide the Department with whatever additional information and assistance it needs to pursue the elimination or modification of each of the regulations and policies we have identified. We urge the Department to take immediate and decisive action in response to the President's directive.

Respectfully submitted,

Anne H. McNamara

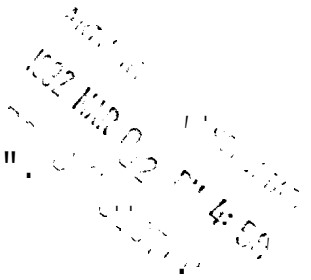
ANNE H. McNAMARA
Senior Vice President
Admin. and General Counsel
American Airlines, Inc.
(817) 967-1400

cc: OST Docket 47978, FAA-Docket 26768, RSPA Docket RR-l

BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D. C.



FEDERAL REGULATORY REVIEW IN RESPONSE TO THE PRESIDENT	Docket 47978

COMMENTS OF AMERICAN AIRLINES, INC.,
IDENTIFYING REGULATIONS, PROPOSED REGULATIONS, AND
POLICIES WHICH SHOULD BE ELIMINATED OR MODIFIED

Communications with respect to this document should be sent to:

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March 2, 1992

BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D. C.

FEDERAL REGULATORY REVIEW IN RESPONSE TO THE PRESIDENT	Docket 47978

COMMENTS OF AMERICAN AIRLINES, INC.,
IDENTIFYING REGULATIONS, PROPOSED REGULATIONS, AND
POLICIES WHICH SHOULD BE ELIMINATED OR MODIFIED

On behalf of American Airlines, Inc., this responds to the Federal regulatory review announced by the President and the Department's request for comments (57 Fed. Reg. 4744, February 7, 1992). As we explain in our accompanying letter to Secretary Card, the Department should take immediate and decisive action to eliminate or substantially modify the regulations and policies identified below.

Respectfully submitted,

Anne H. McNamara

ANNE H. McNAMARA
Senior Vice President
Admin. and General Counsel
American Airlines, Inc.

March 2, 1992

DEPARTMENT OF TRANSPORTATION

GOVERNMENT AGENCY

Department of Transportation

SUBJECT MATTER

Passenger manifest information

CITE TO REGULATIONS OR PROPOSED REGULATION

ANPRM, 56 Fed. Reg. 3810, January 31, 1991

ISSUE AND EXPLANATION

DOT proposes to require all U.S. airlines to provide a complete manifest to the Department of State within one hour of an aircraft incident that occurs outside of the U.S. This would require reservations to collect passport and emergency (next of kin) contact information prior to each international departure.

COST OR OTHER REGULATORY BURDEN

We anticipate substantial additional talk time and negative customer service/revenue impact in trying to collect the appropriate information and answer questions. We also anticipate substantial delays at the airport in collecting this information immediately prior to departure from passengers who have not provided it earlier.

RECOMMENDATIONS, ALTERNATIVES, AND COST SAVINGS

DOT should require carriers to collect passport data but not to collect any additional passenger contact information. Many of our direct bookings already include multiple phone contacts for the passenger. Since many reservations are made through travel agents and other carriers, we frequently have no contact with passengers until they arrive at the airport.

BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

In re:	
REGULATORY REVIEW	Docket 47978
(Notice 92-l)	

Comment
~~ANSWER~~ OF
NORTHWEST AIRLINES, INC.

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BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

In re:	
REGULATORY REVIEW	Docket 47978
(Notice 92-l)	

COMMENTS OF
NORTHWEST AIRLINES, INC.

Northwest Airlines, Inc. **("Northwest"),** by its undersigned attorneys, hereby submits these comments in response to Notice 92-l and in support of the recommendations and proposals previously submitted by the Air Transport Association.[1] Northwest believes that this comprehensive review of the Department's regulations, initiated pursuant to the President's directive of January 28, 1992, is critically important. If the review is pursued with a conscientious commitment to the President's goals, it should greatly assist the industry in mounting an economic recovery.

As the Department well knows, the U.S. airline industry is in dire economic condition. Last year, the industry lost $2 billion on top of nearly $4 billion the year before. Of the 13 major U.S. airlines operating at the start of 1991, three have since terminated operations, representing a loss of thousands of good

[1] **ATA's** proposals were submitted by letter dated February 6, 1992, to the Acting Secretary. A supplemental submission was made on February 28, 1992.

jobs, and three other major carriers are currently operating in bankruptcy. Moreover, the most recent results are not encouraging as many carriers posted substantial fourth-quarter losses. The two largest U.S. carriers, American and United, have recently announced cut-backs in their capital investment programs and possible workforce reductions.

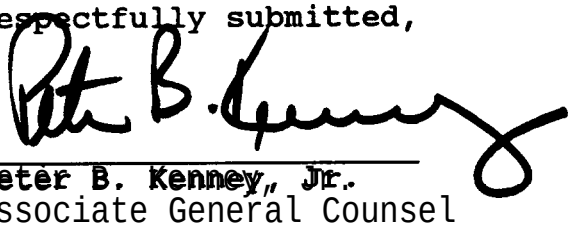
While many U.S. industries have suffered in the current recession, few operate under the burden of government regulation and taxes to the extent the airline industry does. The federal excise tax now stands at ten percent, an array of surcharges are imposed on international passengers, and passenger facility charges may soon increase the cost of many round-trip tickets by as much as $12. By the same token, the Department's comprehensive regulation of each carrier's operations directly adds to the carrier's costs. For an industry currently experiencing negative growth, it is time to recognize that each additional cost drives up price and drives down demand.

It is therefore critically important that the Department approach its regulatory responsibilities with the perspective reflected in the President's directive of January 28. New regulations should not be imposed, and old regulations should not be retained, unless the expected benefits of the regulation clearly outweigh the expected costs it will impose on society, particularly

the cost of impeded growth and lost jobs. Moreover, the Department should search for mechanisms that will maximize the achievement of its regulatory objectives while minimizing the financial burden imposed on the industry.

To this end, Northwest urges the Department to carefully consider each of the proposals that have been submitted by the Air Transport Association. The **ATA** proposals are a product of an industrywide effort to identify regulatory initiatives that should be reevaluated in light of present economic conditions. The **ATA's** proposals offer genuine opportunities for the Department to reduce the cost of regulation, and in the spirit of the President's directive, they should be adopted.

Respectfully submitted,



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ORIGINAL

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Regulatory Review Initiative	)	Docket 47978

COMMENTS OF AIR CANADA

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Attorneys for
AIR CANADA

Date: March 2, 1992

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Regulatory Review Initiative	)	Docket 47978

COMMENTS OF AIR CANADA

Air Canada welcomes President Bush's directive that federal agencies conduct a comprehensive review of regulations that are costly and unnecessary. Without doubt, the airline industry has been the subject of numerous, sometimes contradictory, regulations, the cumulative effects of which are administratively burdensome and costly. International air transportation has experienced remarkable growth in part because the signatories to the Convention on International Civil Aviation (the "Chicago Convention") recognized the need to develop standardized international guidelines with respect to safety and security matters through the International Civil Aviation Organization (ICAO) and to limit burdensome taxes and user fees.[1/] Unfortunately, this system is breaking down.

Over the last several years, the airline industry has been the subject of legislative and regulatory initiatives emanating from a

1/ Convention on International Civil Aviation, December 7, 1944, 61 Stat. 1180.

wide variety of U.S. Government agencies. Because there are so many U.S. Government agencies regulating airline activities besides the Department of Transportation, there has been no cost/benefit analysis that considers the cumulative impacts of all regulations and taxes affecting the airline industry. These unwelcome regulatory initiatives include:

(1) User Fees

Over the last year and a half, the U.S. Travel and Tourism Administration[2/] and Department of Agriculture[3/] both proposed assessing so-called user fees against foreign carriers or their passengers to fund governmental activities that broadly serve the public and should properly be funded from general revenues. Not to be outdone, the State of California proposed its own APHIS user fee of $85 per aircraft arrival for inspection services performed by U.S. Department of Agriculture personnel." These user fees are

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2/ USTTA recently withdrew its rule imposing a $1 user fee after finding that collection of the fee would be inconsistent with the international obligations of the United States. 57 Fed. Reg. 4154 (Feb. 4, 1992). However, the fee may reappear in another form.

3/ See 56 Fed. Reg. 14837 (April 12, 1991); 57 Fed. Reg. 755 (January 9, 1992).

4/ 3 Cal. Code of Reg. § 5350-5353 (effective April 1, 1991).

imposed in addition to a $5 INS user fee[5/] and 10% excise tax on air transportation involving transborder routes.[6/]

Soon passengers will be paying up to an additional $12 per round trip for passenger facility charges at all eligible airports in the United States. The obligation to collect a PFC flows from the mere fact that a carrier issues a ticket, forcing the airline to adopt an accounting system that can track all the endless permutations of a passenger's itinerary. In contrast, the "head taxes" of the 1970's -- which were outlawed at the time because they created an excessive administrative burden -- were collected on the basis of a carrier's enplanement at an airport it actually served. The administrative burden of PFC collection is enormous because airlines will likely end up as tax collectors for nearly 600 U.S. airports. Foreign airlines cannot serve the vast majority of U.S. airports because cabotage restrictions reserve domestic passengers for U.S. carriers. The requirement to collect a PFC for airports which an airline does not and cannot serve is an unfair -- as well as costly -- burden to impose on foreign carriers.[7/]

5/ 3 U.S.C.A. § 1356, as amended by Pub. L. 101-515, § 210(a)(l). 104 Stat. 2101 (Nov. 5, 1990). See 55 Fed. Reg. 5756 (Feb. 26, 1988).

6/ 22 U.S.C.A. §§ 4261(a) and 4262(a)(l).

7/ In addition, requiring foreign airlines to collect PFCs for projects which are unrelated to providing facilities or services at air terminals would amount to assessing an embarkation tax prohibited by the Chicago Convention. The Convention provides that

(continued...)

Any given "user fee" will be regarded as a modest or inconsequential amount by its proponents. Air Canada notes with concern the lack of any mechanism requiring coordination among U.S. Government agencies to ensure that user fees are consistent with the U.S. Government's bilateral commitments.[8/] There is simply no regulatory mechanism to prevent U.S. Government agencies from emulating other agencies that have successfully transferred the costs of sustaining or expanding the federal bureaucracy to the airline industry. The cumulative impact of all of these "modest surcharges" has been detrimental to the airline industry, but particularly on transborder operations. Fares in short-haul transborder markets are very low compared with the average fare in long-haul international markets. As a result, "user fees" make up a significant percentage of the total ticket price and are thus responsible for significant increases in the bottom line fare paid

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7/(...continued)

> No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

Art. 15, para. 3, December 7, 1944, 61 Stat. 1180. ICAO has said that

> when any levy is in the form of a compulsory contribution to the support of the government and is not then used for providing facilities or services at air terminals, it is in reality an embarkation or disembarkation tax.

ICAO's Policies on Taxation in the Field of International Air Transport, ICAO Doc. No. 8632-C/968 (1966) at 16.

8/ See 57 Fed. Reg. 755, 763 (Jan. 9, 1992).

by U.S. and Canadian passengers. Unlike most international services, transborder service also faces competition from surface transportation alternatives.

(2) Law Enforcement Activities

Ongoing efforts to "privatize" law enforcement are another general trend that should be reexamined in any comprehensive review of transportation regulations. These law enforcement initiatives include or have included regulations on airport security, drug and alcohol testing of employees, and proposals to require electronic transmission of passenger manifest information." Both the Customs Service and FAA are attempting to regulate various aspects of airport security with no evidence of coordination between the two agencies. While pre-clearance minimizes Air Canada's exposure to

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9/ In its submission, the Air Transport Association suggested that both U.S. and foreign carriers should be required to adopt the Automated Passenger Information (API) system, which was developed for use with the U.S. inspection services, in lieu of proposed passenger manifest information provisions of the FM security regulations. Air Canada believes that such approach would unnecessarily raise costs to foreign carriers which enplane far fewer U.S. origin international passengers than the large U.S. international carriers. Moreover, Air Canada is concerned that such a requirement would yield no benefits in the short-haul transborder markets which are served by the six pre-clearance stations in Canada. This federal regulatory review process should not substitute for a notice and comment rulemaking and ATA's suggestion is more properly the subject of formal rulemaking proceedings which afford all interested parties a chance to be heard.

penalties assessed by the Federal Inspection Services,[10/] another disturbing trend in regulation is the extent to which carriers are subject to increasingly costly fines and penalties for having failed to deter completely criminal drug or alien smuggling schemes despite the airlines' substantial investment in airline and airport related security,

(3) Local Airport Restrictions

A particularly dangerous kind of local rule which can deprive foreign carriers of their bilaterally negotiated route opportunities is a noise-based fleet or operating rule. The most egregious current example is the proposed Port Authority of New York and New Jersey Stage 2 aircraft phaseout rule. Air Canada has strongly opposed this proposal, and the FAA has also let its opposition be known. Nonetheless, if this proposal or some variant of it is adopted, even over FAA and carrier opposition, it will gravely impair Air Canada's ability to operate at the New York/Newark airports. The DC-9 aircraft primarily used at these airports, and for which Air Canada has no replacement, would be phased-out of operation a year ahead of the federal noise rule. Development of a strong FAA regulatory review process to deter

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10/ U.S. Customs and the Immigration & Naturalization Service have agents stationed at six Canadian airports to inspect U.S. destined passengers. See aenerally, 19 U.S.C. Parts 146 and 162; 55 Fed. Reg. 28755 (July 13, 1990).

unreasonable local restrictions on airport access is thus an initiative that enhances competition and efficiency.

The Fallacy of the "Level Playing Field"

In many regulatory and legislative proceedings, U.S. carriers have argued that foreign airlines should be required to submit to the same regulatory standards as U.S. carriers. Unfortunately, facial equality has a superficial appeal. However, U.S. competitiveness will **not** improve by imposing burdensome regulations on foreign carriers. Foreign carriers **enplane** far fewer passengers in the United States than the U.S. carriers. To comply with many of these regulations, foreign carriers would have to adopt special regulatory or personnel procedures that differ from policies or procedures of the government that has certificated the foreign carrier. These costs typically involve fixed or start-up costs that, by their nature, may impact all regulated entities -- whether foreign or domestic -- more or less **equally, e.g.,** setting up a drug testing program or automating operations. Incremental costs of compliance most likely decline with volume. Thus, foreign carriers could easily suffer from higher average costs of regulatory compliance.

Perhaps of far greater significance is the disparity between U.S. and foreign carriers' revenue from U.S. sales. U.S. carriers can spread the cost of regulatory compliance over both domestic U.S. and foreign passengers. Indeed, more than 90% of U.S.

airlines' revenues are generated on domestic routes which are closed to foreign airlines. Thus, a foreign carrier's average regulatory costs per U.S. passenger enplaned would likely be significantly greater than U.S. carriers' costs in the same international market. Foreign carriers can only recover the cost of complying with burdensome U.S. regulations from a few U.S. international routes. The cumulative cost of burdensome regulation could become so expensive that foreign airlines could no longer compete on a fair and equal basis. A "level playing field" is not one in which foreign carriers are burdened with excessive regulatory costs while they are simultaneously forbidden from earning significant U.S. revenues to offset vast regulatory expenditures.

While some may believe that U.S. competitiveness would be enhanced if foreign firms were forced out of U.S. markets, the United States benefits greatly from vigorous competition in international air transportation and from U.S. travel and tourism stimulated by foreign airlines. Transportation costs are a component in all goods and services produced by the U.S. Thus, all U.S. businesses benefit from competitive pricing. If regulatory burdens become so great that international carriers must either raise their fares and rates substantially or exit the U.S. market, U.S. passengers and shippers will ultimately suffer. For example, international airlines today provide the United States with substantial tourism revenues to redress the trade imbalance.

The United States Government historically has asserted that the public interest is best served by "open skies." Indeed, the United States and Canada have now embarked upon bilateral negotiations to open U.S. and Canadian markets. However, Governments can only agree in bilateral discussions to diminish or remove bilaterally-created regulatory barriers to carriers' entry into new markets. True economic opportunities are only available in an environment that permits airlines of any nation to compete on truly fair and equal terms. One measure of fairness is the extent to which foreign airlines are burdened with unreasonable regulatory costs.

The answer is not, as some suggest, to extend burdensome and unreasonable regulations to foreign carriers. Rather, the approach which is most consistent with the traditional views of the United States Government is that governments should refrain from unilaterally imposing regulatory restrictions in areas reserved to the flag carrier's government and limit taxation to reasonable, nondiscriminatory fees for airport-related facilities genuinely used by an airline.

Air Canada appreciates that most of the regulations that are the subject of this comment fall outside the Department's jurisdiction. But that is the point. While the Departments of State and Transportation are attempting to negotiate pro-competitive agreements with foreign countries, other U.S. agencies are busy creating regulatory conditions under which foreign

airlines cannot hope to compete on a fair and equal basis with the much larger U.S. carriers. Bilateral assurances that the United States Government will undertake its "best efforts" to minimize taxation or to impose only "just and reasonable" user fees become meaningless when the United States Congress, other federal government agencies, or state legislatures decide that their immediate need for tax revenues takes precedence over general principles of international aviation policy that have heretofore governed bilateral and multilateral air transport agreements. The cost/benefit analysis was performed long ago when it was agreed that the airline industry would prosper only if governments minimized to the greatest extent possible the proliferation of non-uniform regulations and burdensome taxes. Air Canada strongly urges that DOT reassert a leadership role in formulation of regulatory policies that comport with these principles.

Respectfully submitted,

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Date: March 2, 1992